

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CRIMINAL ACTION NO.: 2:08CR028-SA

TERRY KITCHENS

DEFENDANT

ORDER ON MOTION FOR SPECIFIC PERFORMANCE

Terry Kitchens requests that the Court order specific performance of his plea agreement entered October 1, 2008. Kitchens contends he agreed to plead to five kilograms of cocaine hydrochloride, but at sentencing, the Government advocated for a higher drug quantity which increased his sentencing guidelines range. He contends the Court sentenced him on a higher level than he should have been pursuant to the plea agreement.

The Court has reviewed Kitchens' plea agreement and notes that he did agree to plead guilty to "conspiracy to possess with intent to distribute *in excess of* five (5) kilograms of cocaine hydrochloride" (emphasis added). More compelling here, though, is paragraph 4, which states as follows:

4. **SENTENCING.** There is no agreement as to the sentence to be imposed, which will be in the sole discretion of the Court

Accordingly, as the plea agreement specifically contains reference that the parties agree that there was no agreement as to the sentence, the Defendant cannot now contend an agreement as to sentence was reached. Defendant's Motion Seeking Specific Performance of Plea Agreement [380] is DENIED.

SO ORDERED, this the 25th day of June, 2014.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE